

The Gazette



of India

EXTRAORDINARY

PART II—Section 2

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HOUSE OF THE PEOPLE

The following Bills were introduced in the House of the People on 5th March, 1953:—

BILL No. 13 OF 1953

A Bill further to amend the Representation of the People Act, 1950, and the Representation of the People Act, 1951, and to make certain consequential amendments in the Government of Part C States Act, 1951,

BE it enacted by Parliament as follows:—

PART I.—PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Representation of the People (Amendment) Act, 1953.

(2) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of the Act.

PART II.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1950.

2. Substitution of new section for section 14 in Act XLIII of 1950.—For section 14 of the Representation of the People Act, 1950 (hereafter in this Part referred to as the principal Act), the following section shall be substituted, namely:—

‘14. Definitions.—In this Part, unless the context otherwise requires,—

(a) “constituency” means an Assembly constituency or a Council of States constituency;

(b) “qualifying date” means, in the case of every electoral roll first prepared under this Part, the first day of March, 1950, and in the case of every roll subsequently prepared or revised, the first day of March of the year in which it is so prepared or revised.’

3. Substitution of new section for section 19 in Act XLIII of 1950.—For section 19 of the principal Act, the following section shall be substituted, namely:—

“19. *Conditions of registration.*—Subject to the foregoing provisions of this Part, every person who, on the qualifying date—

(a) is not less than 21 years of age, and

(b) is ordinarily resident in a constituency,

shall be entitled to be registered in the electoral roll for that constituency.”.

4. Amendment of section 20, Act XLIII of 1950.—In section 20 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) A member of the Armed Forces of the Union shall be deemed to be ordinarily resident on any date in the constituency in which, but for his service in the Armed Forces, he would have been ordinarily resident on that date.”.

5. Substitution of new section for section 21 in Act XLIII of 1950.—For section 21 of the principal Act, the following section shall be substituted, namely:—

“21. *Chief Electoral Officers.*—(1) There shall be for each State a Chief Electoral Officer who shall be such officer of the State Government as may be appointed by the Election Commission in consultation with that Government.

(2) Subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer shall supervise the preparation and revision of all electoral rolls in the State under this Act.”.

6. Substitution of new sections for sections 23, 24 and 25 in Act XLIII of 1950.—(1) For sections 23, 24 and 25 of the principal Act, the following sections shall be substituted, namely:—

“23. *Revision of electoral roll.*—It shall be the duty of the Electoral Registration Officer to revise the electoral roll for each constituency every year in the prescribed manner with reference to the qualifying date:

Provided that if for any reason the electoral roll for any constituency is not revised, or the revision of the electoral roll for any constituency is not completed, in any year, the validity or continued operation of the electoral roll shall not thereby be affected:

Provided further that the Election Commission may at any time for reasons to be recorded in writing direct a further revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit.

24. *Correction of entries in electoral rolls.*—The Electoral Registration Officer for a constituency, on application made to him for the correction of an existing entry in the electoral roll of the constituency, shall, if he is satisfied after such enquiry as he thinks fit, that the entry relates to the applicant and is erroneous or defective in any particular, amend the entry accordingly.

25. *Inclusion of names in electoral rolls.*—(1) Any person whose name is not included in the electoral roll of a constituency may apply in the manner hereinafter provided for the inclusion of his name in that roll.

(2) Where an application under sub-section (1) is made at any time after the issue of a notification calling upon the constituency to elect a member or members and before the completion of that election, it shall be made to the Election Commission; and in any other case, it shall be made to the Electoral Registration Officer of the constituency.

(3) The Election Commission or, as the case may be, the Electoral Registration Officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other constituency in the same State, the Election Commission or, as the case may be, the Electoral Registration Officer, shall inform the Electoral Registration Officer of that constituency, and that Officer shall, on receipt of the information, strike off the applicant's name from that electoral roll.

(4) Where an Electoral Registration Officer rejects an application made under this section, an appeal shall lie to the Election Commission within such time and in such manner as may be prescribed.

(5) Every application and appeal under this section shall be accompanied by the prescribed fee which shall in no case be refunded."

(2) For the avoidance of doubt it is hereby declared that sub-rule (2) of rule 20 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, shall be deemed to have always been as valid as if its provisions had been enacted in, and had formed part of, section 25 of the principal Act.

7. Insertion of new section 26 in Part III, and omission of existing section 26 in Part IV in Act XLIII of 1950.—(1) In Part III of the principal Act, the following section shall be inserted at the end, namely:—

"26. *Electoral rolls for Parliamentary Constituencies.*—(1) The electoral roll for every Parliamentary constituency other than the Parliamentary constituency of the State of Bilaspur shall consist of the electoral rolls of all the Assembly constituencies or Council of States constituencies, as the case may be, comprised within that Parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such Parliamentary constituency.

(2) The provisions of sections 14 to 25 (excluding the definition of "constituency" in section 14) shall apply in relation to the Parliamentary constituency of the State of Bilaspur as they apply in relation to Assembly constituencies."

(2) Section 26 in Part IV of the principal Act shall be omitted.

8. Insertion of new section 28A in Act XLIII of 1950.—After section 28 of the principal Act, the following section shall be inserted, namely:—

"28A. *Staff of local authorities to be available.*—Every local authority in a State shall, when so requested by the Election Commission or the Chief Electoral Officer of the State, make available to

any Electoral Registration Officer such staff as may be necessary for the performance of any duties in connection with the preparation and revision of electoral rolls."

PART III.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

9. Amendment of section 8, Act XLIII of 1951.—In sub-section (1) of section 8 of the Representation of the People Act, 1951 (hereafter in this Part referred to as the principal Act), for clause (b), the following clause shall be substituted, namely:—

"(b) a disqualification under clause (c) of that section shall take effect from the date on which the Election Commission decides that the return of election expenses has not been lodged within the time and in the manner required by or under this Act;"

10. Insertion of new section 19A in Act XLIII of 1951.—After section 19 of the principal Act, the following section shall be inserted, namely:—

"19A. *General duties of Chief Electoral Officers.*—Subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer of each State shall supervise the conduct of all elections in the State under this Act."

11. Amendment of section 22, Act XLIII of 1951.—In section 22 of the principal Act, in the proviso to sub-section (2), the words "or to the counting of votes" shall be omitted.

12. Amendment of section 26, Act XLIII of 1951.—In section 26 of the principal Act, to sub-section (1), the following further proviso shall be added, namely:—

"Provided further that nothing in this sub-section shall prevent the Returning Officer from appointing the same person to be the presiding officer for more than one polling station in the same locality."

13. Amendment of section 33, Act XLIII of 1951.—In section 33 of the principal Act, for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) In a constituency where any seat is reserved for the Scheduled Castes or the Scheduled Tribes, a candidate shall be deemed to be qualified to be chosen to fill that seat only if his nomination paper is accompanied by a declaration verified in the prescribed manner that the candidate is a member of the Scheduled Castes or of the Scheduled Tribes for which the seat is so reserved and the declaration specifies the particular caste or tribe of which the candidate is a member and also the area in relation to which such caste or tribe is one of the Scheduled Castes or Scheduled Tribes, as the case may be.

(3A) In a constituency where any seat is reserved for an autonomous district of Assam other than the constituency comprising the cantonment and municipality of Shillong, a candidate shall be deemed to be qualified to be chosen to fill that seat only if the nomination paper is accompanied by a declaration verified in the prescribed manner that the candidate is a member of any of the Scheduled Tribes of that district and the declaration specifies the particular tribe of which the candidate is a member.

(3B) Where a candidate for a seat referred to in sub-section (3) or sub-section (3A) is nominated by more than one nomination paper,

it shall be sufficient if only one nomination paper is accompanied by the declaration referred to in that sub-section; and in such a case the rejection of the nomination paper accompanied by such declaration shall not render the declaration invalid and it shall be available for any other nomination paper found to be in order.

(3C) Where the candidate is a person who, having held any office referred to in clause (f) of section 7, has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State."

14. Amendment of section 36, Act XLIII of 1951.—In section 36 of the principal Act,—

(a) for clause (a) of sub-section (7), the following clause shall be substituted, namely:—

"(a) a certified copy of an entry in the electoral roll of a constituency for the time being in force shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (XLIII of 1950)"; and

(b) after sub-section (7), the following sub-section shall be inserted, namely:—

"(8) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the Returning Officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board."

15. Insertion of new section 36A in Act XLIII of 1951.—After section 36 of the principal Act, the following section shall be inserted, namely:—

"36A. *Appeals from decisions of Returning Officers.*—(1) An appeal shall lie to a judge as herein provided from any decision of a Returning Officer accepting or rejecting a nomination paper.

(2) For the purpose of hearing such appeals from the decisions of Returning Officers in every State, the Election Commission shall, in consultation with the Chief Justice of the High Court of that State, nominate one or more judges of that High Court.

(3) Where only one judge is so nominated for a State, all appeals from the decision of Returning Officers from within the State shall be presented to, and disposed of by, that judge.

(4) Where more judges than one are so nominated for a State, the Election Commission shall divide the State into as many regions as there are judges and assign to each judge one such region; and all appeals from the decisions of Returning Officers within that region shall be presented to, and disposed of by, that judge.

(5) Any candidate aggrieved by a decision of the Returning Officer accepting or rejecting a nomination paper may present an appeal therefrom to the judge within a period of seven days from the date

of publication of the list of validly nominated candidates under sub-section (8) of section 86:

Provided that such candidate has, not later than 3 o'clock in the afternoon of the day next following the said date, given the Returning Officer a notice in writing of his intention to appeal under this section.

(6) If one or more notices has or have been received in accordance with the proviso to sub-section (5), the Returning Officer shall, immediately after the expiry of the time mentioned in that proviso,—

(a) publish the notices by affixing to his notice board one copy of each of the notices, together with an intimation in the prescribed form that the hearing of the appeals, if any, presented in pursuance of those notices will commence before the judge on the tenth day after the date of such publication; and

(b) send to the judge having jurisdiction a copy of each of the notices, the intimation referred to in clause (a) and the list of validly nominated candidates published under sub-section (8) of section 86.

(7) The Returning Officer shall, on application made by or on behalf of a candidate, supply forthwith to the applicant a copy of the decision accepting or rejecting a nomination paper together with the statement of reasons, if any, recorded by him under sub-section (6) of section 86.

(8) In every appeal under this section, the appellant shall join as respondents all the candidates (other than himself) whose nominations have been accepted by the Returning Officer.

(9) The intimation affixed to the notice board of the Returning Officer under clause (a) of sub-section (6) shall be deemed to be sufficient notice, both of the presentation of an appeal under this section and of the date on which the hearing thereof shall commence before the judge, and it shall not be necessary to give any other notice to the appellants or the respondents and the appeal or appeals shall be deemed to have been fixed for peremptory hearing on the said date.

(10) Every appeal under this section shall be heard *de die in diem* and disposed of by the judge as expeditiously as possible, and his decision shall be communicated forthwith to the Returning Officer.

(11) Where one or more notices of intention to appeal has or have been given to the Returning Officer, but no appeal is presented within the period specified in sub-section (5), the judge shall immediately intimate that fact to the Returning Officer in the prescribed form.

(12) In every case where one or more notices of intention to appeal has or have been given to the Returning Officer, he shall, upon receipt of the communications of the judge referred to in sub-sections (10) and (11), republish by affixing to his notice board the list of validly nominated candidates after revising it, if necessary, in conformity with the decisions of the judge.

(13) The decision of the judge on appeal under this section, and subject only to such decision, the decision of the Returning Officer

under section 36, accepting or rejecting the nomination of a candidate shall be final and conclusive and shall not be called in question in any court or tribunal, including an election tribunal."

16. Amendment of section 37, Act XLIII of 1951.—In section 37 of the principal Act,—

(a) in sub-section (1), for the words "on the day fixed under clause (c) of section 30" the words "of the last day for such withdrawal" shall be substituted, and the proviso shall be omitted; and

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) The last day for the withdrawal of candidatures under this section shall be—

(a) where no notice of appeal has been given in accordance with the proviso to sub-section (5) of section 36A, the third day after the date on which the list of validly nominated candidates is published under sub-section (8) of section 36; and

(b) where such notice of appeal has been given, the third day after the date on which the list of validly nominated candidates is republished under sub-section (12) of section 36A:

Provided that if the said third day referred to in clause (a) or in clause (b) is a public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881 (XXVI of 1881), or has been notified by the State Government as a day to be observed as a holiday in Government offices in the State, the next succeeding day which is neither such a public holiday nor a day so notified shall be the last day for the withdrawal of candidatures."

17. Substitution of new section for section 38 in Act XLIII of 1951.—For section 38 of the principal Act, the following section shall be substituted, namely:—

"38. *Publication of list of contesting candidates.*—(1) Immediately after the expiry of the period within which candidatures may be withdrawn under section 37, the Returning Officer shall prepare and publish in such form and manner as may be prescribed a list of candidates who were included in the final list of validly nominated candidates and who have not withdrawn their candidatures within the said period (hereafter in this Act referred to as 'the contesting candidates').

(2) The said list shall contain the names in alphabetical order and the addresses of the contesting candidates as given in the nomination papers, together with such other particulars as may be prescribed."

18. Substitution of new section for section 40 in Act XLIII of 1951.—For section 40 of the principal Act, the following section shall be substituted, namely:—

"40. *Election agents.*—(1) There shall be an election agent for every candidate at an election.

(2) A candidate shall be deemed to have appointed himself to be his election agent until and unless he appoints another person to be his election agent.

(3) Every appointment of an election agent shall be made in the prescribed form, signed by the candidate and the election agent, and lodged with the Returning Officer; and it shall be effective only from the date on which it is so lodged."

19. Substitution of new sections for sections 46 and 47 in Act XLIII of 1951.—For sections 46 and 47 of the principal Act, the following sections shall be substituted, namely:—

"46. Appointment of polling agents.—A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station provided under section 25 or at the place fixed under sub-section (1) of section 29 for the poll, and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to such officer as may be prescribed.

47. Appointment of counting agents.—A contesting candidate or his election agent may, before the commencement of the counting of the votes, appoint in the prescribed manner one or more persons, but not exceeding such number as may be prescribed, to be present as his counting agent or agents at the counting of votes, and when any such appointment is made notice of the appointment shall be given in the prescribed manner to the Returning Officer."

20. Insertion of new section 67A in Chapter V in Act XLIII of 1951.—In Chapter V of the principal Act, after section 67, the following section shall be inserted, namely:—

"67A. Date of election of a candidate.—Every candidate who is declared by the Returning Officer under the provisions of section 53, section 54 or section 66 to be elected to a House of Parliament or of the Legislature of a State or to an electoral college for a scheduled Part C State shall, as from the date of such declaration, or if the seat in respect of which the election is held has not then become vacant, as from the date on which it becomes vacant, be deemed to be a member of that House or electoral college, as the case may be, and references in this Act to the date of election of a member or a candidate shall be construed as references to the date of such declaration, or as the case may be, the date on which the seat becomes vacant."

21. Amendment of section 68, Act XLIII of 1951.—In section 68 of the principal Act,—

(a) in sub-section (1), for the words "within ten days from the date of publication in the Gazette of India of the declarations that he has been so chosen or, if such publications have been made on different dates within ten days from the later of such dates, intimate" the words "within ten days from the date, or the later of the dates, on which he is so chosen, intimate" shall be substituted; and

(b) the following sub-section shall be added at the end, namely:—

"(4) For the purposes of this section and of section 69, the date on which a person is chosen to be a member of either House of Parliament shall be, in the case of an elected member, the date of his election and in the case of a nominated member, the date of first publication in the Gazette of India of his nomination."

22. Amendment of section 69, Act XLIII of 1951.—In section 69 of the principal Act,—

(a) in sub-section (1), for the words “on the publication in the Gazette of India of the declaration that he has been so chosen” the words “on the date on which he is so chosen” shall be substituted; and,

(b) in sub-section (2), for the words “on the publication in the Gazette of India of the declaration that he has been so chosen” the words “on the date on which he is so chosen” shall be substituted.

23. Substitution of new section for section 76 in Act XLIII of 1951.—For section 76 of the principal Act, the following section shall be substituted, namely:—

“76. *Return of election expenses.*—(1) Within the prescribed time after every election there shall be lodged with the Returning Officer in respect of each contesting candidate a return of election expenses signed by the candidate, and where the candidate has another person as his election agent, also by the election agent:

Provided that where owing to absence from India a candidate is unable to sign and lodge within the prescribed time the return of election expenses and has another person as his election agent, it shall be signed and lodged by the election agent only, but in any such case the candidate shall, within 14 days of his return to India, sign and lodge with the Returning Officer a declaration in the prescribed form.

(2) Every return of election expenses shall be in such form and contain such particulars as may be prescribed.”

24. Substitution of new section for section 78 in Act XLIII of 1951.—For section 78 of the principal Act, the following section shall be substituted, namely:—

“78. *Application of Chapter.*—This Chapter shall apply only to the following elections, namely:—

- (i) elections to the House of the People;
- (ii) primary elections;
- (iii) elections to the Legislative Assembly of a State; and
- (iv) elections to the Legislative Council of a State from a Council constituency.”

25. Amendment of section 81, Act XLIII of 1951.—In section 81 of the principal Act, in sub-section (1), for the words and figures “in such form and within such time but not earlier than the date of publication of the name or names of the returned candidate or candidates at such election under section 67, as may be prescribed” the words “within two months from, but not earlier than, the date of election of the returned candidate, or if there are more than one candidate at the election and the dates of their election are different, the later of those two dates” shall be substituted.

26. Substitution of new section for section 82 in Act XLIII of 1951.—For section 82 of the principal Act, the following section shall be substituted, namely:—

“82. *Parties to the petition.*—A petitioner shall join as respondents to his petition,—

- (a) where the petitioner claims a declaration under clause
- (b) of section 84, all the contesting candidates other than the

petitioner, and in any other case, all the other returned candidates whose election is called in question by the petition;

(b) any other candidate against whom allegations of any corrupt or illegal practice are made in the petition; and

(c) where the petitioner complains of the conduct of the Returning Officer, also that officer."

27. Substitution of new section for section 83 in Act XLIII of 1951.—For section 83 of the principal Act, the following section shall be substituted, namely :—

"83. *Contents of petition.*—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies,

(b) shall set forth full particulars of any corrupt or illegal practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice, and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

28. Substitution of new section for section 85 in Act XLII of 1951.—For section 85 of the principal Act, the following section shall be substituted, namely :—

"85. *Procedure on receiving petition.*—(1) If the provisions of section 81 or section 117 have not been complied with, the Election Commission shall dismiss the petition.

(2) If the petition is not dismissed under sub-section (1) the Election Commission shall cause a copy thereof to be published in the Official Gazette, and shall also cause a copy to be served by post on each respondent.

(3) The cost of such publication and service, as certified by the Election Commission, shall be paid by the petitioner at the office of the Election Commission within such time as may be fixed by it, and the Election Commission may, in its discretion, dismiss the petition for default in making such payment.

(4) Costs paid under sub-section (3) shall form part of the costs of the petition."

29. Amendment of section 86, Act XLIII of 1951.—In section 86 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely :—

"(4) If during the course of the trial, the office of the Chairman or any other member of a Tribunal falls vacant owing to death, resignation or otherwise, the Election Commission shall, as soon as practicable, appoint a person to fill the vacancy in accordance with the provisions of sub-section (3) and upon such person joining the Tribunal the trial shall be continued as if he had been on the Tribunal from the commencement of the trial:

Provided that the Tribunal may, if it thinks fit, re-call and re-examine any of the witnesses already examined.

(4A) The Tribunal shall have power to act notwithstanding the casual absence of not more than one member; and no act or proceeding of the Tribunal shall be invalid or called in question on the ground merely of such casual absence."

30. Insertion of new section 87A in Act XLIII of 1951.—After section 87 of the principal Act, the following section shall be inserted, namely:—

"87A. *Power of Election Commission to withdraw and transfer petitions.*—The Election Commission may at any stage withdraw any petition pending before a Tribunal and transfer it for trial to another Tribunal constituted in accordance with the provisions of section 86; and upon such transfer, that Tribunal shall proceed with the trial from the point at which it was withdrawn:

Provided that it may, if it thinks fit, re-call and re-examine any of the witnesses already examined."

31. Amendment of section 90, Act XLIII of 1951.—In section 90 of the principal Act,—

(a) sub-section (1) shall be omitted, and sub-sections (2), (3) and (4) shall be re-numbered as sub-sections (1), (2) and (3) respectively; and

(b) after sub-section (3) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(4) Any candidate not already a respondent shall, upon application made to the Tribunal within fourteen days of the appointment of a Chairman and subject to the provisions of section 119, be entitled to be joined as a respondent.

(5) The Tribunal may, upon such terms as to costs and otherwise as it may direct, allow the petition to be amended in such manner as may, in its opinion, be necessary for the purpose of ensuring a fair and effective trial of the petition."

32. Amendment of section 100, Act XLIII of 1951.—In section 100 of the principal Act,—

(a) in sub-section (1), the word "or" occurring at the end of clause (b) and clause (c) shall be omitted;

(b) in sub-section (2), after clause (b), the following clause shall be inserted, namely:—

"(bb) that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution or this Act or under the Government of Part C States Act, 1951 (XLIX of 1951), as the case may be."

33. Amendment of section 123, Act XLIII of 1951.—In section 123 of the principal Act, in clause (b) of the *Explanation* to clause (8), for the words "but shall not include a person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply" the following shall be substituted, namely:—

"but shall not include—

(i) any person (other than such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply; and

(2) any such village officer as aforesaid who is a candidate for election to Parliament or the Legislature of the State and is not disqualified for being chosen as a member of Parliament, or, as the case may be, of the Legislature of the State."

34. Amendment of section 125, Act XLIII of 1951.—To section 125 of the principal Act, the following clause shall be added at the end, namely:—

"(4) The failure to lodge a return of election expenses within the time and in the manner prescribed by or under this Act."

35. Insertion of new section 135A in Act XLIII of 1951.—After section 135 of the principal Act, the following section shall be inserted, namely —

"135A *Making false declarations.*—If a person makes in, or in connection with, any nomination of a candidate for election or any return of election expenses, a statement or declaration in writing which is false and which he either knows or believes to be false or does not believe to be true he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both."

36. Amendment of section 139, Act XLIII of 1951.—In section 139 of the principal Act, in clause (b) of sub-section (1), after the word and figures "section 135" the words, figures and letter "or section 135A" shall be inserted.

37. Amendment of section 140, Act XLIII of 1951.—In section 140 of the principal Act, in sub-section (1), for clause (b), the following clause shall be substituted, namely —

"(b) illegal practices specified in clauses (1), (2) and (3) of section 125."

38. Amendment of section 141, Act XLIII of 1951.—In section 141 of the principal Act, in clause (a), after the word and figures "section 135" the words, figures and letter "or section 135A" shall be inserted.

39. Amendment of section 142, Act XLIII of 1951.—In section 142 of the principal Act, after the words "illegal practice" the words, brackets and figures "specified in clause (1), (2) or (3) of section 125" shall be inserted.

40. Substitution of new section for section 143 in Act XLIII of 1951.—For section 143 of the principal Act, the following section shall be substituted, namely:—

"143. *Disqualification arising out of failure to lodge return of election expenses.*—If a candidate or his election agent, being required by this Act to lodge a return of election expenses or declaration fails to do so within the time and in the manner required by or under this Act, the candidate or the election agent, as the case may be, shall be disqualified for voting at any election for the period during which, under the provisions of clause (c) of section 7 and clause (b) of sub-section (1) of section 8, he is disqualified for being chosen as a member of either House of Parliament."

PART IV.—CONSEQUENTIAL AND MINOR AMENDMENTS

41. Consequential and minor amendments in Acts XLIII of 1950 XLIII of 1951 and XLIX of 1951.—The further amendments specified in the Schedule, being amendments consequential upon the foregoing provisions.

of this Act or relating to matters of minor detail, shall be made in the Representation of the People Act, 1950, the Representation of the People Act, 1951 and the Government of Part C States Act, 1951.

THE SCHEDULE

(See section 41)

I.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1950

1. In section 2,—

(a) for clause (b), the following clause shall be substituted, namely:—

“(b) ‘Assembly constituency’ means a constituency provided by order made under section 9 of this Act or under sub-section (2) of section 4 of the Government of Part C States Act, 1951 (XLIX of 1951) for the purpose of election to the Legislative Assembly of a State.”.

(b) after clause (h), the following clause shall be added at the end, namely.—

“(g) ‘State Government’, in relation to a Part C State, means the Lieutenant-Governor or Chief Commissioner thereof.”.

2. In section 3A, sub-section (2) shall be omitted.

3. In section 8, for the words “a Legislative Assembly” the words “the said Legislative Assemblies” shall be substituted.

4. In section 9, in clause (a), after the words “each State” the words “specified in the Second Schedule” shall be inserted.

5. For the heading of Part III, the heading “ELECTORAL ROLLS FOR ASSEMBLY, COUNCIL OF STATES AND PARLIAMENTARY CONSTITUENCIES” shall be substituted.

6. In section 17, after the word “constituency” the words “in the same State” shall be inserted.

7. In section 20.—

(a) in sub-section (4), the words “during any period or” and the words “during that period or” shall be omitted;

(b) in sub-section (5), the words “during any period or” shall be omitted;

(c) in sub-section (6), the words “during any period” and the words “that period” shall be omitted; and

(d) sub-section (7) shall be omitted.

8. In section 22,—

(a) in sub-section (1), after the words “shall be prepared” the words “and revised” shall be inserted; and

(b) in sub-section (2), after the words “the preparation” the words “and revision” shall be inserted.

9. Section 22A shall be omitted.

10. For the heading of Part IV, the heading “ELECTORAL ROLLS FOR COUNCIL CONSTITUENCIES” shall be substituted.

11. In section 27,—

(a) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The provisions of sections 15, 16, 18, 20, 21, 22, 28, 24 and 25 shall apply in relation to Council constituencies as they apply in relation to Assembly constituencies”;

(b) to sub-section (6), the words “or revised” shall be added at the end.

12. Section 27F shall be omitted.

13. In section 28, in sub-section (2), for clause (h), the following clause shall be substituted, namely:—

“(h) the annual revision of electoral rolls;”.

14. The Sixth and Seventh Schedules shall be omitted.

II.—AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

15. In section 2,—

(a) in sub-section (1),—

(i) after clause (b), the following clause shall be inserted, namely:—

“(bb) ‘Chief Electoral Officer’ means the officer appointed under section 21 of the Representation of the People Act, 1950 (XLIII of 1950).”;

(ii) for clause (e), the following clause shall be substituted, namely:—

“(e) ‘elector’ in relation to a constituency, means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950.”;

(iii) clause (i) shall be omitted;

(iv) clauses (j) and (k) shall be re-lettered as clauses (i) and (j) and after clause (j) as so re-lettered, the following clause shall be inserted, namely:—

“(k) ‘State Government’ in relation to a Part C State, means the Lieutenant-Governor or Chief Commissioner thereof.”;

(b) sub-sections (5) and (7) shall be omitted.

16. In section 8, in sub-section (1), clause (g) shall be omitted.

17. In section 16, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) A general election shall be held for the purpose of constituting in due time the Legislative Assembly of each State under the Constitution or under the Government of Part C States Act, 1951 (XLIX of 1951), as the case may be.”.

18. In section 17,—

(a) the words “under the Constitution in due time or” shall be omitted;

(b) for the words “Governor or Rajpramukh” the words “Governor, Rajpramukh, Lieutenant-Governor or Chief Commissioner” shall be substituted.

19. In section 30,—

(a) at the end of clause (a), the word “and” shall be inserted;

(b) clauses (c) and (d) shall be omitted; and

(c) the following shall be added at the end:—

“and by another notification in the Official Gazette appoint in due course the date or dates on which a poll shall, if necessary, be taken, which or the first of which, shall be a date not earlier than the thirtieth day after the date for the scrutiny of nominations.”.

20. In section 31, for the words “a notification” the words “the first notification” shall be substituted.

21. To section 32, the words, letter, brackets and figures “or under the provisions of the Government of Part C States Act, 1951 (XLIX of 1951), as the case may be” shall be added at the end.

22. In section 36, in sub-section (2), in clauses (a) and (b), after the words “this Act” the words, letter, brackets and figures “or the Government of Part C States Act, 1951 (XLIX of 1951)” shall be inserted.

23. In section 39,—

(a) in sub-section (2), at the end of clause (a), the word “and” shall be inserted, clauses (c) and (d) shall be omitted and at the end of the sub-section, the following shall be added:—

“and by another notification in the Official Gazette appoint in due course the date on which a poll shall, if necessary, be taken which shall be a date not earlier than the tenth day after the date for the scrutiny of nominations”;

(b) in sub-section (3), for the words “a notification” the words “the first notification” shall be substituted; and

(c) in sub-section (4), for the brackets and figure “(3)” the brackets, figure and letter “(3C)” shall be substituted.

24. In section 53, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) If the number of contesting candidates exceeds the number of seats to be filled, a poll shall be taken.”.

25. In section 54, for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) In this section all references to candidates shall be construed as references to the contesting candidates.”.

26. To section 55, the words, letter and figures “or under the Government of Part C States Act, 1951 (XLIX of 1951), as the case may be” shall be added at the end.

27. In section 58,—

(a) in sub-section (1), the proviso shall be omitted;

(b) in sub-section (2),—

(i) the words “or at any polling booth” shall be omitted;

(ii) the words “or in such polling booth, as the case may be” shall be omitted.

(c) in sub-section (3), the words “or in such polling booth” shall be omitted.

28. In section 97,—

(a) in the proviso to sub-section (1), for the words and figures “from the date of the publication of the election petition under section 90” the words “from the date of appointment of the Chairman” shall be substituted;

(b) in sub-section (2), for the words “and list of” the words “together with the” shall be substituted.

29. In section 119, for the words, brackets and figure “sub-section (1)” the word, brackets and figure “sub-section (4)” shall be substituted.

30. In section 153, in sub-section (2), for the words “or Rajpramukh of the State” the words “Rajpramukh, Lieutenant-Governor or Chief Commissioner of the State” shall be substituted.

III.—AMENDMENTS OF THE GOVERNMENT OF PART C STATES ACT, 1951

31. In section 2, sub-section (2) shall be omitted.

32. Section 6 shall be omitted.

33. In section 7,—

(a) the word “and” shall be added at the end of clause (a); and

(b) the word “and” at the end of clause (b), the whole of clause

(c) and the *Explanation* shall be omitted.

34. Section 8 shall be omitted.

35. The First and Second Schedules shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The proposals in this Bill for the amendment of the Representation of the People Acts of 1950 and 1951 have been formulated in the light of the experience gained by the Election Commission, as well as the Government, during and after the general elections. Parts II and III of the Bill contain the more important amendments proposed in these two Acts. Certain consequential and minor amendments to these Acts and to the election provisions of the Government of Part C States Act, 1951 are listed in the Schedule.

I. THE REPRESENTATION OF THE PEOPLE ACT, 1950

(1) Parts III and IV of this Act contain provisions for the preparation of electoral rolls in all the States. The scheme is that in every State there are separate rolls for Parliamentary constituencies and for Assembly constituencies despite the fact that each Parliamentary constituency consists of an integral number of Assembly constituencies. An Electoral Registration

Officer has to be appointed for each Parliamentary constituency as well as for each of the Assembly constituencies comprised in that Parliamentary constituency. The electoral rolls have to be formally published, both at the time of preliminary publication and at the time of final publication for each one of these Parliamentary and Assembly constituencies separately. All this leads to unnecessary duplication of work and expenditure which could be easily avoided by making the electoral roll for an Assembly constituency the unit and providing that the electoral roll for a Parliamentary constituency shall consist of the appropriate number of component units merely put together.

In the three Part C States of Kutch, Manipur and Tripura where there are no Legislative Assemblies there are what are known as Council of States constituencies for the purpose of electing 30 members to an electoral college. Each of these three States has at present two Parliamentary constituencies each of which comprises 15 Council of States constituencies. In these States the electoral roll for a Council of States constituency should be the unit and the electoral roll for a Parliamentary constituency should consist of 15 of these component electoral rolls put together.

It is accordingly proposed in clauses 2 and 7 of the Bill—

(i) to modify the definition of constituency in section 14 to read :

“ ‘constituency’ means an Assembly constituency or a Council of States constituency”, and

(ii) to insert a section at the end of Part III to the effect that “the electoral roll for every Parliamentary constituency other than the Parliamentary Constituency of the State of Bilaspur shall consist of the rolls for all the Assembly constituencies, or as the case may be, the Council of States constituencies, comprised within that Parliamentary constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such Parliamentary constituency.”.

(2) Section 19 of the Act lays down two conditions for registration in any constituency, namely, (a) the person should have been ordinarily resident in the constituency for not less than 180 days during the preceding calendar year, and (b) he should not have been less than 21 years of age on the 1st of March of the year in which the roll is prepared or revised. In practice, however, owing to the paucity of staff at our disposal it has not been possible to make anything like a thorough inquiry on the first point, and the authorities responsible for the annual revision of the electoral rolls have mostly been content with ascertaining whether the elector ordinarily resides in the constituency at the time of revision. There seems no great advantage in finding out whether an elector has been resident in a constituency for any particular period. It is therefore proposed in clause 3 of the Bill that the law should be simplified by relating “ordinary residence” to the “qualifying date” rather than to any “qualifying period”.

(3) Sub-section (3) of section 20 of the Act distinguishes between members of the Armed Forces who live in “a barrack, building or place belonging to or provided by the Government” and those who are permitted to live in private quarters. These latter are comparatively very few. It is desirable to have a uniform rule for all members of the Armed Forces in order to avoid any discrimination and also to facilitate the administrative

work which this provision throws on the various Headquarters. It is therefore proposed that the sub-section should be simplified as in clause 4 of the Bill.

(4) Section 23 requires that the electoral roll for each constituency shall be "prepared" every year in the prescribed manner with reference to the qualifying date. In view of the enormous size of the rolls and the expense already incurred in the preparation of the first electoral rolls the Election Commission has decided not to attempt anything like a completely fresh preparation of the rolls except in a few localities. A house to house inquiry and a re-writing of the rolls every year will be unduly expensive and almost impracticable. All that is feasible is an annual *revision*, rather than an actual *preparation*, of the rolls, and it is proposed that section 23 should be amended accordingly. The rolls which are now under preparation in all the States and likely to be finalised by the end of the year will be revised annually from next year onwards, and subject to such revision will continue to be in force permanently.

(5) At present the Act itself does not contain any special provision for the inclusion of names in the electoral rolls, but rule 20(2) of the Preparation of Electoral Roll Rules, 1950, contains the necessary provision. Since doubts have arisen as to validity of the rule, and the provision is important enough to find a place in the Act itself, it is proposed in clause 6 of the Bill that a new section 25 should be inserted for this purpose, and the rule also validated. Except when an election has been announced in the constituency, application for inclusion in the electoral roll will lie to the Electoral Registration Officer. The section also provides for an appeal to the Election Commission from an order of that Officer rejecting an application. During the period when an election is in progress the application will lie only to the Election Commission.

(6) Another new provision has been proposed in the Bill (*vide* clause 5), in order to give statutory recognition to Chief Electoral Officers of States who have been found in practice to be an essential part of the electoral machinery. While these officers have to be officers of the State Government, it is proposed that they should be appointed by the Election Commission in consultation with the State Government, and subject to the superintendence, direction and control of the Election Commission, they should supervise the preparation and revision of all electoral rolls within their respective States.

(7) It is desirable that the staff of local authorities should be made available to Electoral Registration Officers for work in connection with the preparation and revision of electoral rolls as they are now made available to Returning Officers under section 159 of the 1951 Act for work in connection with elections. For this purpose a new section is proposed in clause 8 of the Bill.

II. THE REPRESENTATION OF THE PEOPLE ACT, 1951

(1) Under section 7(c) a person is disqualified for membership of Parliament or of a State Legislature if he has failed to lodge a return of election expenses as required by or under the Act, and under section 8(1)(b) the disqualification takes effect on the expiration of two months from the last date for lodging that return or of such longer period as the Election Commission may in any particular case allow. The experience of the last general elections has shown that this period of two months from the last

date for lodging the return is quite insufficient for scrutinizing literally thousands of such returns and deciding whether they have been lodged within the time and in the manner required by law. It is therefore proposed that clause (b) of section 8(1) should be amended so that the disqualification does not become operative until the Election Commission has decided the point under the rules.

(2) Under the proviso to sub-section (2) of section 22, Assistant Returning Officers are debarred from performing any of the functions of the Returning Officer which relate to the counting of votes unless he is unavoidably prevented from performing those functions. In a large constituency it sometimes becomes necessary to count votes at different places, but since Assistant Returning Officers are not permitted to do this, the Returning Officer himself has to go from one place to the other. This entails a good deal of avoidable delay. It is therefore proposed to omit the words "or to the counting of votes" from the said proviso.

(3) Section 25 requires that for each constituency there shall be provided a sufficient number of polling stations and that there shall be published a list showing the polling stations and the polling areas for which they have respectively been provided. In practice, we have more than one polling booth at many polling stations, sometimes as many as four or five. Since all records have to be kept separately for each polling booth, these are given serial numbers for purposes of identification. It would be administratively more convenient to treat polling stations as indivisible units and allot definite polling areas to each of them as contemplated by section 25, and where necessary, groups of electors with reference to the electoral roll even where two or more polling stations are located in the same building. In other words, it is desirable that the Act and the Rules should refer only to polling stations and all references to polling booths should be eliminated. In fact, the only section in which reference is made to polling booths is section 58, as amended by Act LXVII of 1951. It is proposed that the references to polling booths should be eliminated from section 58 and section 26(1) should be amended enabling the appointment of the same person to be the presiding officer for more than one polling station in the same locality.

(4) Sub-section (5) of section 33 in its present form has been a fruitful source of election petitions on the ground of unlawful rejection of nomination papers. Its main provision is that along with every nomination paper there should be a declaration by the candidate that he has appointed either himself or another specified person as his election agent. The great majority of candidates appoint themselves as their own election agents. According to section 43 when the candidate revokes the appointment of an election agent without making another appointment he is deemed to have appointed himself to be his election agent. There is no reason why this principle should not be extended also to first appointments, it being provided (*vide* revised section 40 in clause 18 of the Bill) that a candidate shall be deemed to have appointed himself as his election agent until and unless he appoints another person to be his election agent. It is desirable that the nomination paper should be made as simple as possible by doing away with all unnecessary declarations. In particular, it need not contain any declaration as to the appointment of an election agent. In clause 13 of the Bill it is accordingly proposed to revise sub-section (5) of section 33, by omitting the

opening paragraph, converting the three provisos into sub-sections, and adding a new provision the effect of which is to render unnecessary the filing of more than one declaration as to the candidate belonging to a particular scheduled caste or scheduled tribe.

(5) The rule of evidence contained in clause (a) of sub-section (7) of section 36 is not properly worded. The certified copy of an entry in the electoral roll of a constituency could only be evidence of the fact that the individual referred to in the entry is for the time being registered as an elector in the constituency, and the conclusive nature of this piece of evidence should also be confined to this fact. The right of the individual to stand for election or to subscribe a nomination paper as proposer or as seconder accrues from the relevant provisions of the Act which have to be properly applied, and the mere production of a certified copy of an entry in the electoral roll cannot be taken as conclusive evidence of any of these rights. It is accordingly proposed in clause 14 of the Bill to revise clause (a) of sub-section (7) of section 36. It is also proposed to insert a new sub-section (8) in this section requiring every Returning Officer to prepare a list of validly nominated candidates immediately after the scrutiny of nomination papers is over.

(6) Under the present law the Returning Officer's decision accepting or rejecting a nomination paper cannot be questioned except by an election petition after the election is over. Recent experience has shown that by far the majority of the elections which have been set aside by Election Tribunals have been set aside on the ground of improper rejection of nomination papers. A good deal of harassment and anxiety to candidates and of public inconvenience and expenditure can be avoided if suitable provisions are made for appeals before the holding of elections against the decisions of Returning Officers accepting or rejecting nomination papers and making the decisions of the appellate authority final. It is accordingly proposed in clause 15 of the Bill to insert a new section 36A providing for an appeal to a judge of the High Court against the decision of the Returning Officer accepting or rejecting a nomination paper. The section has been so drafted as to enable a quick decision being obtained and not to hold up polling unnecessarily.

(7) Section 46 provides for the appointment of polling agents "at least three days before the commencement of the poll". Many candidates at the general elections found it impossible to comply with this time limit and in order to avoid hardship the Returning Officers and Presiding Officers had to accept polling agents appointed later. It is proposed in clause 19 of the Bill to remove this time limit which appears to be unnecessary.

(8) Section 47 at present restricts the number of counting agents of every candidate to one, so that at the time of counting only the candidate, his election agent, if any, and the counting agent are entitled to be present and watch the proceedings. It is almost impossible for a single counting agent to watch with any degree of care and thoroughness when a number of counting parties are doing the counting. It is therefore proposed (*vide* clause 19) that section 47 should be amended so as to allow the appointment of a number of counting agents subject to the prescribed maximum. Provision could be made in the rules for restricting the number of counting agents in such manner as might be considered suitable for the particular election in progress.

(9) Questions often arise as to when exactly an elected candidate becomes a member of the House to which he is elected and what is the date of his election. There is usually an interval between the date of declaration of a result under sections 53, 54 or 66 and the date on which that declaration is published in the Official Gazette under section 67. The declaration is reproduced *verbatim* in the Gazette and contains the date on which it has actually been made by the Returning Officer. The date of notification in the Gazette is therefore not material and there appears to be no real justification for regarding the latter date as the date on which an elected candidate becomes a member of a particular House. Moreover, while the elected candidate is immediately aware of the declaration made by the Returning Officer and its date, he has to keep a close watch on the Official Gazettes in order to know the date on which the declaration is notified in the Gazette, and this from the point of view of the candidate is neither easy nor convenient. In clause 20 of the Bill, it is accordingly proposed to insert a new section defining the date of election of a candidate.

(10) The requirement relating to the submission of returns of election expenses under section 76 applies primarily to all elections to—

- (i) the House of the People;
- (ii) a State Legislative Assembly;
- (iii) the Electoral Colleges of Kutch, Manipur and Tripura;
- (iv) a State Legislative Council from—
 - (a) the local authorities' constituencies,
 - (b) the graduates' constituencies,
 - (c) the teachers' constituencies.

Section 78 provides that, except so far as may be prescribed, sections 76 and 77 shall not apply to the other elections, namely:—

(v) elections by the members of a State Legislative Assembly or Electoral College to the Council of States, and

(vi) elections by the members of a State Legislative Assembly to the State Legislative Council.

A rule however has been prescribed making the sections applicable to these latter elections as well, with the result that returns are required to be lodged in respect of all elections, whether primary or secondary, and whether direct or indirect.

Section 78 requires a return to be lodged in respect of each person who has been nominated as a candidate. In view of the distinction made in the Act between "nominated" and "duly nominated", it appears that every person who puts in a nomination paper at the election, whether the nomination was rejected at the time of scrutiny and whether he himself withdrew his candidature in time, has to file a return of election expenses. There have been literally hundreds of cases in which such candidates were under the erroneous impression that they were not required to file returns, and consequently incurred disqualifications with reference to sections 7(c) and 143. Since these non-contesting candidates could not possibly have incurred any appreciable expenses and no one could be interested in their returns, it seems quite unnecessary to require them to file returns.

In clauses 23 and 24 of the Bill, it is proposed to modify the law relating to returns of election expenses so that—

(a) sections 76 and 77 do not apply at all to the classes of elections mentioned in section 78;

(b) in other elections, returns are required only of contesting candidates;

(c) where the candidate is his own election agent, the return need not be signed twice by the candidate; and

(d) the return itself contains the prescribed declaration as to correctness, but this need not be sworn before a magistrate.

(11) Under sub-section (1) of section 81, the period of limitation for presenting an election petition is left to be prescribed by rules which is not very satisfactory. It is proposed to specify this period in the section itself. 45 days are allowed for lodging the return of election expenses and, adding 15 days to it, the period of limitation for presenting an election petition may be two months from the date of the election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their elections are different, two months from the later of those dates.

(12) Section 82 provides that all the duly nominated candidates shall be joined as respondents to an election petition. Even in the case of elections to the House of the People or a State Legislative Assembly, particularly in plural member constituencies, the number of duly nominated candidates has been very large, with the result that the service of notices on them takes a very long time and holds up the trial of the election petition. Naturally, it is only the returned candidate who takes any interest in contesting the election petition. Moreover there is a provision in section 90(1) which enables any other candidate "to join as a respondent within 14 days of the publication of the notice in the Official Gazette". On the other hand, there is no provision for joining the Returning Officer as a respondent in cases where the petition complains of his conduct. It is accordingly proposed in clause 26 of the Bill that section 82 should be revised so that it is necessary to join as respondents only those candidates who are interested *prima facie* in the outcome of the petition, and also the Returning Officer if any allegations are made against him.

(13) Where the petition alleges any corrupt or illegal practice, sub-section (2) of section 83 requires a separate list setting forth full particulars of the practices alleged, and also as full a statement as possible as to the names of the parties alleged to have committed those practices at the date and place of commission of those practices. This provision is often not fully understood by petitioners, or even where it is understood, there is great deal of repetition as between the petition proper and the list. It would be simpler from all points of view to have a complete and self-contained petition. It is proposed that section 83 should be revised formally from this point of view.

(14) Under section 85, the Election Commission is required to dismiss any petition if sections 81, 83 and 117 are not complied with, but it may condone a failure to present a petition within the prescribed period if it is satisfied that there was sufficient cause. This condonation is not, however, final and the issue may be re-opened before the Election Tribunal under section 90. In view of the special nature of election petitions and

the desirability of reaching finality in regard to all election matters, it is proposed that the provision for condoning delay should be omitted and that the power to dismiss a petition for non-compliance with section 83 should be exclusively with the Election Tribunal under section 90.

Secondly, where a petition is not dismissed under section 85, the present procedure is for the Election Commission to constitute a Tribunal, which in practice takes some little time, and then to refer the petition to it for trial. The Chairman who is appointed first proceeds to cause a copy of the petition to be served on each respondent and also to be published in the Official Gazette under section 90(1). It would be easy, economical and expeditious for the Election Commission to attend to these preliminaries, so that the Tribunal, when appointed, may proceed without delay to the actual trial of the petition. It is accordingly proposed in clause 28 that section 85 should be amended and amplified to cover these two points.

(15) At present there is no provision in the Act enabling an Election Tribunal to perform its functions in spite of the casual absence of one of its members. There is also no provision empowering the Election Commission to withdraw an election petition from one Tribunal and transfer it to another for disposal. It is accordingly proposed in clauses 29 and 30 to insert the necessary provisions in and after section 86 of the Act.

(16) Consequent upon the proposal mentioned in paragraph (6) above, it is necessary to amend sub-sections (1) and (2) of section 100. Clause (c) of sub-section (1) which enables an Election Tribunal to set aside the election as a whole on the ground of improper acceptance or rejection of a nomination is proposed to be deleted. If this is done, it is clearly necessary that the Tribunal should be able to set aside the election of a returned candidate if it is proved that on the date of his election, he was not qualified, or was disqualified to be chosen to fill that particular seat. It is proposed to add a clause to this effect in sub-section (2) of section 100. It may be mentioned in this connection that under the election law as it stood before 1956, an election could be set aside on the ground that any person nominated was not qualified or was disqualified for election.

(17) Under *Explanation (b)* below section 123(8) of the Act, a State Government is debarred from exempting village officers from the operation of section 123(8), with the result that no village officer can canvass at an election for any candidate. In some of the States, however (*e.g.* Punjab), special legislation has been passed enabling certain classes of village officers to stand for elections although they may be holding offices of profit under the Government. Thus it is possible for a lambardar in Punjab to stand for an election but it is a major corrupt practice for any candidate to obtain the assistance of any lambardar, including one who is himself a candidate, at an election. This is obviously anomalous. At the same time the reasons for excluding village officers from the purview of the exempting power given to State Governments are obvious. It is, therefore, proposed in clause 33 of the Bill to amend the explanation so that those village officers only who actually stand for election are not hit by the prohibition.

(18) Failure to lodge a return of election expenses within the time and in the manner required by law is at present neither a corrupt practice nor an illegal practice. The first part of section 143, however, disqualifies a candidate as well as his election agent (if any) for such failure from

voting at any election for a period of 5 years. Inasmuch as this is neither a corrupt practice nor an illegal practice under the Act, it is arguable that this provision in section 143 is not quite consistent with article 326 of the Constitution and section 16(1) (c) of the 1950 Act. It is accordingly proposed that this should be made an illegal practice by an amendment of section 125.

(19) In the revised section 76, it is proposed that the candidate need not make a separate sworn declaration in regard to his return of election expenses. A declaration as to the correctness of the return would, however, be included in the prescribed form of the return. The revised section 33 also provides for certain declarations to be filed along with the nominations. In all such cases it should be a punishable offence for any person to make a false declaration, and a new section is proposed for this purpose in clause 35 of the Bill. Consequently, a reference to this offence is proposed to be included in sections 139(1) (b) and 141(a).

NEW DELHI;

The 26th February, 1953.

C. C. BISWAS

Notes on clauses

Clause 2.—See Part I (1) of the Statement of Objects and Reasons (hereinafter referred to as "S.O.R.").

Clause 3.—See Part I (2), S.O.R.

Clause 4.—See Part I (3), S.O.R.

Clause 5.—See Part I (6), S.O.R.

Clause 6.—See Part I (4) and (5), S.O.R.

Clause 7.—See Part I (1), S.O.R. Special provision is made for the State of Bilaspur in sub-section (2) of the new section 26, since it constitutes a single-member Parliamentary constituency and has neither a Legislative Assembly nor an electoral college.

Clause 8.—See Part I (7), S.O.R.

Clause 9.—See Part II (1), S.O.R.

Clause 10.—The new section 19A gives statutory recognition to the Chief Electoral Officers of States for purposes of the Act of 1951. They have in fact been supervising the conduct of elections.

Clause 11.—See Part II (2), S.O.R.

Clause 12.—See Part II (3), S.O.R.

Clause 13.—See Part II (4), S.O.R.

Clause 14.—See Part II (5), S.O.R.

Clause 15.—See Part II (6), S.O.R.

Clause 16.—In view of the provision for appeals from the returning officers' orders, it will not be possible for the competent authority or the Election Commission to fix before-hand a definite date for the withdrawal of candidatures under section 80. This date has to be in the

alternative, depending on whether any appeal is lodged or not. The proposed amendment of section 87 provides for this. Clause (o) of section 80 is proposed to be deleted: *vide* item 19 of the Schedule to the Bill.

Clause 17.—The Act at present draws a distinction, not readily intelligible, between duly nominated candidates and validly nominated candidates. Candidates may have been "duly nominated" although their nomination papers are rejected on scrutiny by the Returning Officers. The Act also has no short designation for the candidates whose nominations have been finally accepted and who have not withdrawn their candidature within the prescribed time. It is proposed to call these the contesting candidates and refer to them as such in the subsequent provisions of the Act.

Clause 18.—See Part II (4), S.O.R. The revised section 40 simplifies the existing provision relating to election agents.

Clause 19.—See Part II (7) and (8), S.O.R.

Clause 20.—See Part II (9), S.O.R.

Clauses 21 and 22.—These amendments of sections 68 and 69 of the Act are consequential on the new provision in section 67A defining the date of election of a candidate.

Clauses 23 and 24.—See Part II (10), S.O.R.

Clause 25.—See Part II (11), S.O.R.

Clause 26.—See Part II (12), S.O.R.

Clause 27.—See Part II (13), S.O.R.

Clause 28.—See Part II (14), S.O.R.

Clauses 29 and 30.—See Part II (15), S.O.R.

Clause 31.—The amendments of section 90 proposed in this clause are formal and consequential. In view of sub-section (2) of revised section 85, the first part of section 90(1) becomes unnecessary. The last part of that sub-section is transposed by sub-section (4). Sub-section (5) is a new provision.

Clause 32.—See Part II (10), S.O.R.

Clause 33.—See Part II (17), S.O.R.

Clause 34.—See Part II (18), S.O.R.

Clauses 35, 36 and 38.—See Part II (19), S.O.R.

Clauses 37 and 39.—The amendments proposed in sections 140(1) (b) and 142 are formal. The illegal practice of failure to lodge a return of election expenses is excluded from the scope of these two sections, since it is sufficiently provided for in section 148 as revised by clause 40.

Clause 40.—Section 148 is revised by this clause so as to bring it into conformity with sections 7(c) and 8(1) (b).

The Schedule :

Item 1.—As it is proposed to integrate the election provisions of the Government of Part C States Act with the provisions of the Representation of the People Acts, the definition of "Assembly constituency" is revised so as to include Assembly constituencies in Part C States.

The new definition of "State Government" is intended to facilitate the administration of the Act in Part C States.

Item 2.—In view of the amendments made in articles 341 and 342 of the Constitution last year, sub-section (2) of section 8A of the Act of 1950 and the Sixth and Seventh Schedules to that Act are superfluous. The Scheduled Castes and Scheduled Tribes in relation to each of the Part C States have already been listed by Orders of the President.

Items 3 and 4.—The proposed amendments are consequential upon the proposed integration of the election provisions of the Government of Part C States Act with the provisions of the Representation of the People Acts.

Item 5.—The amendment proposed is consequential upon the change in the definition of "constituency"; *vide* clause 2 of the Bill.

Item 6.—The amendment proposed is a clarificatory one.

Item 7.—The amendments proposed in sub-clauses (a), (b) and (c) are consequential upon the proposed omission of all references to "the qualifying period" in relation to "ordinary residence". Sub-clause (7) of section 20 is now spent. It is therefore proposed to omit it by sub-clause (d).

Item 8.—The amendments proposed are clarificatory.

Item 9.—As section 22A is now spent, it is proposed to repeal it.

Items 10 and 11.—Provisions relating to Assembly constituencies having been included in Part III of the Act of 1950 consequent upon the proposed revision of the definition of "constituency", Part IV of that Act will now deal with only Council constituencies. The heading of this Part is, therefore, proposed to be revised as in item 10. Section 26 in this Part being unnecessary has already been proposed to be omitted (*vide* clause 7 of the Bill); and as the electoral rolls of an Assembly constituency will now form the unit, sub-section (4) of section 27 is proposed to be amended by substituting for the reference to 'Parliamentary constituencies' the reference to 'Assembly constituencies'. The amendment proposed in sub-section (6) of section 27 is a clarificatory one.

Item 12.—As it is proposed to include in Part III of the Act of 1950 provisions relating to electoral rolls of Council of States constituencies, section 27F will not be necessary. Hence it is proposed to omit this section.

Item 13.—The amendment proposed is consequential upon the proposed amendment of section 28 providing for the annual revision, instead of annual preparation, of electoral rolls.

Item 14.—*Vide* item 2 above.

Item 15.—As statutory recognition is proposed to be given to the Chief Electoral Officers of States for the purposes of the Act of 1951 (*vide* clause 10 of the Bill), the Chief Electoral Officer is proposed to be defined in this item. The present definition of "elector" is a bit defective. Hence the definition of "elector" is proposed to be amended. Clause (i) of section 2 of the Act of 1951 is proposed to be omitted because the Scheduled Castes and the Scheduled Tribes in relation to Part C States have already been listed by Orders of the President under articles 341 and 342 of the Constitution. Sub-sections (5) and (7) of section 2 of that Act are proposed to be omitted as the rules of construction contained therein are now obsolete.

Item 16.—As clause (g) of sub-section (1) of section 8 of the Act of 1951 is now spent, it is proposed to be omitted.

Items 17, 18, 21, 22, 26 and 30.—The amendments proposed in these items are consequential upon the proposal to integrate the election provisions of the Government of Part C States Act, 1951 with the provisions of the Representation of the People Acts,

Items 19, 20 and 23.—The amendments proposed in sections 30, 31 and 39 of the Act of 1951 are consequential upon the proposed insertion of section 38A. As there may be appeals from the Returning Officers' orders, it will not be possible for the appropriate authority or the Election Commission to fix beforehand the last date for the withdrawal of candidatures or the date or dates on which a poll shall be taken. The amendments proposed in sections 30 and 39 provide for the fixation of a date or dates on which a poll shall be taken. Regarding the date of withdrawal of candidatures *vide* clause 16 of the Bill.

Items 24 and 25.—The amendments proposed are consequential upon the proposed revision of section 38.

Item 27.—The amendments proposed in section 59 are consequential upon the proposal to treat every polling booth as a polling station and to eliminate the references to polling booths from the Act of 1951.

Item 28.—The amendments proposed in section 97 are consequential upon the proposed amendments of sections 83 and 85 respectively.

Item 29.—The proposed amendment is consequential upon the amendment proposed in section 90.

Items 31 and 35.—Sub-section (2) of section 2 of the Government of Part C States Act, 1951, and the First and Second Schedules thereto are unnecessary in view of the Orders issued by the President under articles 341 and 342 of the Constitution and are accordingly proposed to be omitted.

Items 32, 33 and 34.—The proposed omissions and amendments are consequential upon the proposal to integrate the election provisions of the Government of Part C States Act, 1951 with the provisions of the Representation of the People Acts.

BILL No. 16 OF 1953

A Bill further to amend the Minimum Wages Act, 1948.

Be it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Minimum Wages (Amendment) Act, 1953.

2. Amendment of section 2, Act XI of 1948.—In section 2 of the Minimum Wages Act, 1948 (hereinafter referred to as the principal Act),—

(a) in clause (a), for the words and figures "Factories Act, 1934 (XXV of 1934)", the words and figures "Factories Act, 1948 (LXIII of 1948)" shall be substituted; and

(b) in sub-clause (i) of clause (e), for the words, brackets, letter and figures "clause (e) of sub-section (1) of section 9 of the

Factories Act, 1934 (XXV of 1934)", the words, brackets, letter and figures "clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (LXIII of 1948)" shall be substituted.

3. Amendment of section 3, Act XI of 1948.—For sub-section (1) of section 3 of the principal Act, the following sub-sections shall be substituted, namely:—

"(1) The appropriate Government shall, in the manner hereinafter provided,—

(a) fix the minimum rates of wages payable to employees employed—

(i) in an employment specified in Part I of the Schedule at the commencement of this Act, before the 31st day of December, 1953;

(ii) in an employment specified in Part II of the Schedule at the commencement of this Act, before the 31st day of December, 1953:

Provided that the appropriate Government may, instead of fixing minimum rates of wages under this sub-clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof; and

(iii) in an employment added to Part I or Part II of the Schedule by notification under section 27, before the expiry of one year from the date of the notification;

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary.

(1A) Notwithstanding anything contained in sub-section (1), the appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time, whether before or after the expiry of any time limit specified in sub-section (1), the appropriate Government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment within one year from the date on which it comes to such finding."

4. Amendment of section 14, Act XI of 1948.—In section 14 of the principal Act, in sub-section (2), for the words and figures "section 47 of the Factories Act, 1934 (XXV of 1934)", the words and figures "section 59 of the Factories Act, 1948 (LXIII of 1948)" shall be substituted.

5. Amendment of section 26, Act XI of 1948.—For sub-section (1) of section 26 of the principal Act, the following sub-section shall be substituted, namely:—

"(1) The appropriate Government may, subject to such conditions, if any, as it may think fit to impose, direct that the

provisions of this Act shall not apply or shall be deemed never to have applied in relation to the wages payable—

(a) to disabled employees,

(b) to any class of employees in a scheduled employment where on an average the wages payable are or have been seventy-five rupees or more a month if the wages are computed on a monthly basis or three rupees or more per day if the wages are computed on a daily basis.”.

6. Insertion of new section 31 in Act XI of 1948.—After section 30 of the principal Act, the following section shall be inserted, namely:—

“31 *Validation of fixation of certain minimum rates of wages.*—Where during the period commencing on the 1st day of April, 1952, and ending with the date of commencement of the Minimum Wages (Amendment) Act, 1953, minimum rates of wages have been fixed by an appropriate Government as being payable to employees employed in any employment specified in Part I of the Schedule in the belief or purported belief that such rates were being fixed under sub-clause (i) of clause (a) of sub-section (1) of section 3, such rates shall be deemed to have been fixed in accordance with law, and shall not be called in question in any court on the ground merely that the date specified in that sub-clause had expired at the time the rates were fixed:

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the payment by him by way of wages to any of his employees during the period specified in this section an amount which is less than the minimum rates of wages referred to in this section or by reason of non-compliance during the period aforesaid with any order or rule issued under section 13.”

STATEMENT OF OBJECTS AND REASONS

Under sub-clause (i) of clause (a) of sub-clause (1) of section 3 of the Minimum Wages Act, 1948 (XI of 1948), the appropriate Governments were required to fix minimum rates of wages in the employments listed in Part I of the Schedule before the 31st March, 1952. Since the Act was extended to Part B States only with effect from the 1st April, 1951, they had to complete all formalities required for fixing minimum wages within a period of less than one year with the result that it has not been possible for them to fix minimum wages in all cases. Moreover, the rates fixed after the 31st March, 1952 have no validity in law. In order to remove these legal difficulties and to give some more time to the States for enforcing the provisions of the Act it is proposed to extend the time-limit for fixing minimum rates of wages in employments mentioned in Part I of the Schedule to the 31st December, 1953.

2. It is also proposed to provide for the fixation of rates in respect of those scheduled employments for which no minimum rates of wages were initially fixed—in view of the proviso to clause (b) of sub-section (1) of section 3—within one year from the date on which the appropriate Government is satisfied that no less than one thousand employees are engaged in the employment in the whole State.

3. Similarly, when new items are added under the powers conferred under section 27 of the Act, the amending Bill provides that minimum wages in respect of those items should be fixed within one year from the date of issue of the Notification under section 27 of the Act.

4. As the object of the Minimum Wages Act is to provide safeguards for labour in what are called sweated industries, it is proposed to amend section 26(f) so that the appropriate Government has power to direct that minimum rates of wages may not be fixed in respect of employees whose wages average seventy-five rupees or more per month if the wages are computed on a monthly basis or rupees three or more per day, if computed on a daily basis. As the Act stands at present, minimum wages have to be fixed for all classes of employees in the Scheduled employments including those in whose cases there is no real need to do so.

V. V. GIRI.

NEW DELHI,

The 23rd February, 1953

M. N. KAUL

Secretary